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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/685,298 | 10/14/2003 | David C. Fogg | 70163-9157-00 | 9825 |
| 23409 | 7590 | 05/19/2005 | EXAMINER | |
| MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202 | | | TRETTEL, MICHAEL | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3673 | |

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/685,298 | FOGG, DAVID C. | |
| | Examiner | Art Unit | |
| | Michael Trettel | 3673 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 March 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13 and 15-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-13, 15-28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 1 to 7, 9, 13, 15, 16, 18, and 23 to 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas (US 5,117,519). Thomas shows a therapeutic mattress cover 11 which is placed over a conventional mattress 13. The mattress 13 forms a rectangular elastic core with a width and length covered by the mattress cover 11. Mattress cover 11 includes a skirt 19 with elasticized corners 21 that engage the mattress corners to hold the cover in place, Sections 25, 27, 29, 31, and 33 are formed in the cover 11 which overlay the upper surface of the mattress. Each section includes top and bottom filler pads 35, 37 of polyester foam material which are the same width as the mattress, and whose length can be varied on a section wide basis as set forth in column 4, lines 6 to 18. The cover also includes a top sheet layer 39, an intermediate sheet layer 41, and a bottom sheet layer 43 all made of fabric material. Transverse stitching 45 separates the sections 25, 27, 29, 31, and 33 from one another and joins the layers 39, 41, and 43 to one another. This construction forms sleeves that hold and retain the filler pads 35, 37 in an array spaced parallel to one other, with the pads being separated transversely only by the material used to form the sheet layers 39, 41, and 43.

Claim Rejections - 35 USC § 103

Claims 8, 10 to 1217, 19to 22 rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas (SU 5,117,519). Thomas states in column 4, lines 6 to 18 that the widths of the filler pad sections 25, 27, 29, 31, and 33 can be varied as much as 3 inches in either way. This means that the width of the filler pads (identical to the claimed strip length) could be set to be an identical dimension and thus this limitation is within the ordinary level of skill in the art. In addition it is already well known in the art to use viscoelastic foam material as a construction material from making a foam pad, and as such it would have been obvious to the skilled artisan to have used viscoelastic foam to make the filler pads of the Thomas mattress cover. The thickness of the Thomas filler pads are also within the ordinary level of skill in the art, and the use of foam material with differing harnesses in order to create a posturized support surface is also well known in the art. Therefore the subject matter of these claims is considered to be within the ordinary level of skill in the art, and would have been obvious to the skilled artisan.

Response to Arguments

Applicant's arguments with respect to claims 1 to 13 and 15 to 28 have been considered but are moot in view of the new ground(s) of rejection. Upon reconsideration of the claims in view of the prior art of record, the examiner has decided that the claims can be rejected over the Thomas patent. A new rejection has been prepared accordingly.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

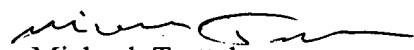
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is (571) 272-7052. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (571) 272-7052. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Art Unit: 3673

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Michael Trettel
Primary Examiner
Art Unit 3673